

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE COMMISSIONER OF COMMERCE

In the Matter of the Residential
Building Contractor's License of
Weatherguard, Inc.

**FINDINGS OF FACT,
CONCLUSIONS, AND
RECOMMENDATION**

The above-entitled matter came on for prehearing conference before Administrative Law Judge Barbara L. Neilson on March 31, 2004, at 1:30 p.m. at the Office of Administrative Hearings, 100 Washington Avenue South, in Minneapolis. The prehearing conference was held pursuant to a Notice of and Order for Prehearing Conference and Statement of Charges, dated February 6, 2004.

Francis Green, III, Assistant Attorney General, Suite 900, 445 Minnesota Street, St. Paul, Minnesota 55101-2127, appeared on behalf of the Department of Commerce ("the Department"). There was no appearance by or on behalf of Respondent Weatherguard, Inc. The last known addresses of Respondent are 23650 Nightingale Street NW, St. Francis, MN 55070 and 9733 Butternut Street NW, Coon Rapids, MN 55434. Based upon Respondent's failure to appear, the Department requested a Default Recommendation. The record closed in this matter upon the close of the prehearing conference on March 31, 2004.

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of Commerce will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the Commissioner's decision shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact the Commissioner of Commerce, 85 East Seventh Street, St. Paul, Minnesota 55101, to ascertain the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision in this matter under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

STATEMENT OF ISSUES

The issues in this case are as follows:

1. Whether Respondent failed to respond to the Department's August 4, 2003, request for information in violation of Minn. Stat. § 45.027, subd. 1(a) (2002);
2. Whether Respondent failed to appear before the Department as ordered on September 5, 2003, in violation of Minn. Stat. § 45.027, subd. 1a (2002);
3. Whether Respondent failed to obtain the required building permit from the City of Plymouth for the Patricia Larson project prior to beginning work, in violation of Minn. Stat. § 326.91, subd. 1(2) (2002) and Minn. R. 2891.0040, subp. 1H (2001);
4. Whether Respondent breached its contract with Carol Bangsund after receiving payment in full, in violation of Minn. Stat. § 326.91, subd. 1(4) (2002);
5. Whether Respondent issued checks on an account with insufficient funds to the City of Plymouth and its insurance agent, constituting financial irresponsibility, in violation of Minn. Stat. § 326.91, subd. 1(6) (2002); and
6. Whether Respondent failed to maintain public liability insurance, in violation of Minn. Stat. § 326.94, subd. 2 (2002).

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. The Notice of and Order for Prehearing Conference and Statement of Charges in this matter was served upon Respondent by U.S. mail on February 6, 2004, at the following addresses: Weatherguard, Inc., Attn: Shawn Prosser, 23650 Nightingale Street NW, St. Francis, MN 55070, and Shawn Prosser, Weatherguard, Inc., 9733 Butternut Street NW, Coon Rapids, MN 55434.

2. The Notice of and Order for Prehearing Conference and Statement of Charges served on Respondent contained the following additional notice:

Respondent's failure to appear at the prehearing conference may result in a finding that the Respondent is in default, that the Department of Commerce's allegations contained in this Notice and Order may be accepted as true, and its proposed action may be upheld.

3. Respondent failed to file a Notice of Appearance with the Administrative Law Judge or make any request for a continuance or any other relief. Respondent did not appear at the prehearing conference scheduled on March 31, 2004, or have an appearance made on its behalf.

4. Because Respondent failed to appear at the prehearing conference in this matter, Respondent is in default. Pursuant to Minn. R. 1400.6000, the allegations contained in the Notice of and Order for Prehearing Conference and Statement of Charges are hereby taken as true and incorporated into these Findings of Fact.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Minnesota Department of Commerce and the Administrative Law Judge have jurisdiction over this matter pursuant to Minn. Stat. §§ 14.50, 45.027, and 326.91 (2002).

2. The Department has given proper notice of the prehearing conference in this matter and has fulfilled all relevant substantive and procedural requirements of law and rule.

3. Respondent, having made no appearance at the prehearing conference and not requesting any continuance or relief, is in default.

4. Pursuant to Minn. R. 1400.6000, a contested case hearing may be decided adversely to a party who defaults. On default, the allegations contained in the Notice of and Order for Prehearing Conference and Statement of Charges may be taken as true or deemed proved without further evidence.

5. By failing to respond to the Department's August 4, 2003, request for information, Respondent violated Minn. Stat. § 45.027, subd. 1a (2002).

6. By failing to appear before the Department as ordered on September 5, 2003, Respondent violated Minn. Stat. § 45.027, subd. 1a (2002).

7. By failing to obtain the required building permit from the City of Plymouth for the Patricia Larson project prior to beginning work, Respondent violated Minn. Stat. § 326.91, subd. 1(2) (2002) and Minnesota Rule 2891.0040, subp. 1H (2001).

8. By failing to complete the work on the Carol Bangsund project, after receiving payment in full, Respondent breached its contract with Ms. Bangsund in violation of Minn. Stat. § 326.91, subd. 1(4) (2002).

9. By issuing checks on an account with insufficient funds to the City of Plymouth and its insurance agent, Respondent has been shown to be financially irresponsible in violation of Minn. Stat. § 326.91, subd. 1(6) (2002).

10. By failing to maintain public liability insurance, Respondent violated Minn. Stat. § 326.94, subd. 2 (2002).

11. Respondent is subject to discipline and civil penalties pursuant to Minn. Stat. §§ 45.027, subds. 6 and 7, and 326.91, subd. 1 (2002), and the imposition of sanctions is in the public interest.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED that the Commissioner of Commerce take disciplinary action against Respondent and impose appropriate civil penalties.

Dated: April 9, 2004.

Reported: Default.

/s/ Barbara L. Neilson

BARBARA L. NEILSON
Administrative Law Judge

NOTICE OF AGENCY DECISION

Pursuant to Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.